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**ADVISORY SERVICES AND TECHNICAL COOPERATION
IN THE FIELD OF HUMAN RIGHTS**

**Report submitted by the independent expert on the situation of human rights
in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré***

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* This report is being transmitted late because of the short time available to the independent expert to complete it following his two missions and because of the need to incorporate additional information.

Summary

The mandate of the independent expert on the situation of human rights in the Democratic Republic of the Congo was established by Commission on Human Rights resolution 2004/84 of 21 April 2004. Following the appointment of two successive special rapporteurs, the first independent expert was appointed on 26 July 2004. Since then, the independent expert has carried out two missions to the Democratic Republic of the Congo, one to Kinshasa and Kisangani from 22 August to 2 September 2004 and one to Kinshasa, Bukavu and Goma from 9 to 19 November 2004, after the fifty-ninth session of the General Assembly.

The independent expert is deeply concerned about the difficulties and delays in the transition, the humanitarian catastrophe and the hardships and neglect suffered by the Congolese people. A report by the International Rescue Committee, an American non-governmental organization, entitled "Mortality in the Democratic Republic of the Congo: results from a nationwide survey", gives the results of a survey on mortality in the Democratic Republic of the Congo carried out between April and July 2004. According to the report, the Congolese conflict has been the most deadly in the world since the Second World War, leaving an estimated 3.8 million people dead between August 1998 and April 2004; the current death toll is about 1,000 persons a day, which adds a further 280,000 victims for the period between May 2004 and January 2005.

The report shows the catastrophic consequences - the equivalent of 20 tsunamis hitting the country since 1998 - of the violence, racial hatred (particularly in the east of the country), massive human rights violations and crimes against humanity and an increasingly widespread climate of corruption. Against this background of lethal violence, the independent expert is particularly appalled by the crimes committed against Congolese women and their children, who are the main victims of the armed violence and of the most atrocious and destructive forms of sexual violence. Mankind is committing suicide, no less, and this is the gravest problem to which the community of nations needs to find an immediate and definitive solution.

The independent expert condemns the international community's policy of burying its head in the sand and hiding behind bureaucratic jargon when it comes to man-made tsunamis, and fears that if this situation is allowed to persist the holding of elections will be jeopardized, any hope of a successful transition will be swept away and the Congolese people's legitimate aspirations to live in a democracy governed by the rule of law and respectful of human rights will once again be indefinitely put on hold.

Like previous years, 2004 was characterized not only by some constructive efforts, which should be acknowledged, but also by massive human rights violations, the manipulation of inter-ethnic intolerance, violence, massacres, abuse of women and children, all kinds of atrocities perpetrated by armed groups against the civilian population, and endless political crises.

In his progress report to the General Assembly (see Note by the Secretariat, A/59/378), the independent expert set out his belief that only a fair and expeditious system of justice could stop the spiralling violence, restore people's trust in their leaders, institutions and the law,

recognize victims' rights, punish wrongdoers and deter recidivism. He therefore called on all parties to end impunity for the perpetrators of crimes, by strengthening the Congolese system of justice, supporting the International Criminal Court (ICC) in its work and establishing an international criminal tribunal to try crimes committed in the Democratic Republic of the Congo.

In the present report, the independent expert calls on all the parties concerned, that is, the Government of the Democratic Republic of the Congo, the transitional organizations and bodies, the Congolese and foreign parties to the conflict, members of the international community, companies and groups with economic interests in the country, the African Union and the United Nations, to work, out of common humanity and in accordance with their obligations under international humanitarian law, the Convention on the Prevention and Punishment of the Crime of Genocide and international human rights instruments, to put an immediate stop to the violence, restore security and consolidate the democratic rule of law and sustainable development.

Without security, and without effective protection for the civilian population, it would be futile and unrealistic to hope for a successful outcome to the peace process and for the holding of elections. Past experience has shown that respect for human rights is a prerequisite for mutual trust between warring parties: to ignore them would be a tragic mistake. Those responsible for massive, daily violations of human rights must be prevented from doing further harm and punished, whatever their level of responsibility.

The illegal exploitation of the country's natural resources, which is closely linked to the arms trade, must be stopped immediately and the traffickers must be arrested and punished. There is an international dimension to this trafficking, which involves nationals from many members of the international community. The latter, through its lack of political will and its indecisiveness, has already been guilty of failing to assist the civilian populations that were the victims of the tragedy in Rwanda and of crimes against humanity throughout the Great Lakes region.

To illustrate the urgent need for appropriate action to help the Congolese people who are the victims of the armed groups, the independent expert has decided to highlight the tragic rape of women, girls and children. Although the violence affects all Congolese, men and women alike, the phenomenon of sexual violence against women and children has reached truly genocidal proportions, and is committed by all the Congolese and foreign armed forces and groups.

Conclusions and recommendations

The independent expert calls on all parties to the conflict to implement agreements in good faith, and calls on the international community to refuse to allow the Congolese people to be the victims of heinous private interests any longer. He calls on the Security Council to give the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)

the mandate and resources it needs to guarantee security and protect the rights of the civilian population, investigate the crimes committed and gather evidence against the perpetrators, so that all Congolese of good will can successfully complete the transition and hold free elections, and to establish an international criminal tribunal to try the crimes committed in the Democratic Republic of the Congo that have been so roundly condemned. He calls for those found responsible for crimes against humanity to be removed from political life and from the army, and for them to be arrested and tried in a national and/or international court with the necessary means and capacity.

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Introduction

1. In its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to “appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights in the Democratic Republic of the Congo and to verify that its obligations in this field are being fulfilled” and to “request the independent expert to submit a progress report on the implementation of the present resolution to the General Assembly at its fifty-ninth session, and to report to the Commission at its sixty-first session”.
2. On 26 July 2004, the Chairperson of the Commission appointed Mr. Titinga Frédéric Pacéré (Burkina Faso) as independent expert on the situation of human rights in the Democratic Republic of the Congo.
3. This report is submitted in accordance with the above-mentioned resolution. It is based on information transmitted regularly to the independent expert by the Office of the United Nations High Commissioner for Human Rights, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and, in particular, the human rights and child protection sections of MONUC, and by representatives of institutions and organizations from civil society, as well as on information gathered during his two visits to the Democratic Republic of the Congo.
4. Those visits were preceded by a stay in Geneva, from 6 to 11 August 2004, during which the independent expert had talks with the Chairperson of the Commission on Human Rights, representatives of the diplomatic missions of the Democratic Republic of the Congo, Nigeria, France, Belgium, the United States of America, Burkina Faso, Rwanda, Angola and Uganda, the United Nations High Commissioner for Human Rights and other officials from the Office of the High Commissioner, and representatives of Congolese and international non-governmental organizations (NGOs).
5. The independent expert visited the Democratic Republic of the Congo for the first time from 22 August to 2 September 2004, when he went to Kinshasa and Kisangani, in Orientale province. In Kinshasa, he had talks with State officials, including the presidents of the Senate and the National Assembly, the Minister for Human Rights, senior officials from the Ministry of Justice and the Supreme Court, the First Advocate-General, the military prosecutor of the armed forces of the Democratic Republic of the Congo, the president of the Congolese Human Rights Monitoring Centre, the chair of the Truth and Reconciliation Commission and members of the inter-ministerial committee responsible for preparing reports for treaty bodies. He also talked with the Special Representative of the Secretary-General of the United Nations and head of MONUC, officials from the human rights and child protection sections of MONUC, the Resident Representative of the United Nations Development Programme (UNDP), representatives of United Nations agencies, members of the diplomatic corps, representatives of human rights organizations and international NGOs, and the national and international press.

6. In Kisangani, the independent expert met the provincial governor, the president of the Episcopal Council, the president of the Bar Association, representatives of local NGOs, local officials from MONUC and representatives of the United Nations and humanitarian agencies.
7. He noted the continuing insecurity, the political and military volatility, mounting ethnic intolerance and the fragility of the transition process. The visit coincided with the temporary withdrawal of the *Rassemblement congolais pour la démocratie* based in Goma (RCD-Goma) from the transition process (from 23 August to 1 September) following the crisis in Bukavu in May-June and the massacre of 152 Banyamulenge in Gatumba, Burundi.
8. The independent expert then visited New York, from 25 to 30 October, to submit his progress report to the General Assembly (see Note by the Secretariat, A/59/378). He said that priority should be given to combating impunity, by strengthening the national judicial system and supporting the International Criminal Court in its work, and he called for the institution of an international criminal tribunal to try crimes of genocide and other crimes against humanity committed in the Democratic Republic of the Congo. During his stay, he also had talks with the Special Adviser of the Secretary-General on the Prevention of Genocide, senior United Nations officials and representatives of international NGOs.
9. The independent expert visited the Democratic Republic of the Congo for the second time from 9 to 18 November 2004, when he travelled to the east of the country.
10. In Kinshasa, he met the Minister for Human Rights, representatives of NGOs and the country's Vice-President, Mr. Z'Ahidi Ngoma. He also visited the Kinshasa penal and rehabilitation centre.
11. In Bukavu, he met the governor of Sud-Kivu province, representatives of churches, women's organizations and human rights NGOs, civil and military judicial officials, provincial representatives of MONUC and United Nations agencies, and representatives of international NGOs and humanitarian agencies. He was unable to pay a planned visit to the prison in Bukavu because of the worsening security situation there.
12. In Goma, he met the governor of Nord-Kivu province, traditional leaders, provincial judicial officials, provincial representatives of MONUC and United Nations agencies, and representatives of local and international NGOs and humanitarian agencies. He visited the prison in Munzenze and visited the victims of sexual violence in the Doctors on Call for Service (DOCS) centre (a hospital in Goma).
13. His observations during his second visit confirmed the independent expert's fears. In the eastern part of the country, he saw how ethnic hatred had spread, and how this was linked to the problem of repatriating foreign militias. He noted the widespread violence and insecurity affecting the population, particularly women and children.
14. Since the independent expert left, the situation has continued to deteriorate as a result of real or presumed foreign interference, particularly by the Rwandan army, the resumption of hostilities, violence and population displacements in Nord-Kivu and Ituri, and heightened inter-ethnic tensions throughout the region.

15. On 8 December 2004, the independent expert issued a joint press release with the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, expressing fears about the mounting tension in the Democratic Republic of the Congo.

16. The independent expert intends to cooperate more closely with the holders of thematic mandates from the Commission. He is considering holding consultations with all those concerned in complying with the request of the General Assembly, contained in its resolution 57/233, paragraph 8 (b), that the special rapporteurs of the Commission on Human Rights on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances of the Commission should carry out a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo with a view to bringing to justice those responsible, and should report to the Commission on Human Rights. He proposes that the Special Rapporteur on violence against women should also be included in the joint mission and calls on the United Nations to provide the appropriate resources for the mission.

17. More generally, the independent expert would like to work closely with all the parties concerned, including the International Criminal Court and the Special Adviser of the Secretary-General on the Prevention of Genocide.

I. OBLIGATIONS OF THE DEMOCRATIC REPUBLIC OF THE CONGO IN THE FIELD OF HUMAN RIGHTS

18. The Democratic Republic of the Congo is a party to the main international human rights conventions. It has ratified the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Political Rights of Women and the Convention on the Rights of the Child and its two optional protocols (on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict).

19. Outside the United Nations sphere, the Democratic Republic of the Congo is a party to the African Charter on Human and Peoples' Rights and its Protocol on the Establishment of an African Court on Human and Peoples' Rights, and to the African Charter on the Rights and Welfare of the Child.

20. The Democratic Republic of the Congo is also a party to International Labour Organization (ILO) Conventions Nos. 4, 11, 12, 14, 17, 18, 19, 26, 27, 29, 50, 62, 64, 81, 87, 88, 89, 94, 95, 98, 100, 102, 105, 111, 116, 117, 118, 119, 120, 121, 135, 138, 144, 150, 158 and 182.

21. On 11 April 2002, the Democratic Republic of the Congo ratified the Rome Statute of the International Criminal Court, entering a reservation to article 87 concerning cooperation between States parties and the Court.

22. However, the Democratic Republic of the Congo has not signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women nor the protocol relating to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Nor is it a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, or the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

23. As regards reports to treaty-monitoring bodies, before an inter-ministerial committee was set up to prepare them, the following reports had been submitted by the Government: the initial report and the second periodic report relating to the International Covenant on Civil and Political Rights; the initial report and the second periodic report relating to the International Covenant on Economic, Social and Cultural Rights; the initial report and the tenth periodic report relating to the International Convention on the Elimination of All Forms of Racial Discrimination; the initial report and the third periodic report relating to the Convention on the Elimination of All Forms of Discrimination against Women; and the initial report and the second periodic report relating to the Convention on the Rights of the Child. With the assistance of the Office of the United Nations High Commissioner for Human Rights, the inter-ministerial committee was able to complete the initial report relating to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was sent to the Committee against Torture, as well as the third, fourth, fifth and sixth periodic reports relating to the International Covenant on Civil and Political Rights, the second, third and fourth periodic reports relating to the International Covenant on Economic, Social and Cultural Rights, the second and third periodic reports relating to the Convention on the Rights of the Child, and the eleventh, twelfth, thirteenth and fourteenth periodic reports relating to the International Convention on the Elimination of All Forms of Racial Discrimination. The core document and the second and third periodic reports to the African Commission on Human and Peoples' Rights are currently being finalized, although the inter-ministerial committee does not as yet have an operational budget. Despite all these efforts, the Democratic Republic of the Congo still has a huge backlog of reports to submit to the relevant bodies.

24. Article 61 of the Transitional Constitution stipulates that "all citizens and public authorities are required to respect the human rights and fundamental freedoms established in this Constitution". The Government has established a ministry of human rights specifically to give effect to the rights of Congolese citizens, but the ministry apparently lacks the resources it needs for this task.

25. The independent expert recommends that the Government should commit itself to acceding to the treaties to which the Democratic Republic of the Congo is not yet a party. He calls on it to fulfil its reporting obligations under the treaties to which the Democratic Republic of the Congo is a party, by, among other things, strengthening the inter-ministerial committee. Lastly, he calls for the Ministry of Human Rights to be given the resources it needs to discharge its duties, since otherwise it will not be able to respond to the people's aspirations.

II. STATUS OF THE TRANSITION, POLITICAL RIGHTS AND THE FREEDOMS OF ASSEMBLY, EXPRESSION AND INFORMATION

26. On the whole, insufficient progress was made in implementing the timetable for the transition in 2004, owing to the particularly unstable political environment.

27. The new laws on political parties, the census and voter identification and on the organization, tasks and functioning of the Independent Electoral Commission, the Congolese Human Rights Monitoring Centre, the High Authority for the Media, the Truth and Reconciliation Commission and the Ethics and Anti-Corruption Commission were significant steps forward, and are to be welcomed. So too are the introduction of regional government, the appointment of senior and junior officers in the armed forces of the Democratic Republic of the Congo and the establishment of a joint army and police brigade in Kisangani. The Senate has submitted a draft constitution for a unitary State with considerable powers devolved to the provinces. However, several questions remain unanswered, including questions on the future relationship and balance of power between the President and the Prime Minister, on the electoral system and on the minimum age requirement for the presidency. The laws on nationality and on the armed forces were promulgated in November, but other key laws, such as those on amnesty, decentralization and elections, are still pending. The organization of elections is very much behind schedule, including from a logistical point of view.

28. Political crises followed one after the other. In March, a group apparently consisting of former members of the Zairian armed forces launched a series of attacks on civilian and military installations in Kinshasa, and were repulsed by loyalist soldiers. In June, Eric Lenge, a major in the Presidential Guard, reportedly attempted a coup. All these things undermined the State's efforts to achieve stability and peace.

29. The fighting in Bukavu in May-June and the massacre of Banyamulenge refugees in Gatumba, Burundi, on 13 August, followed by the temporary withdrawal of RCD-Goma from the transition process (from 23 August to 1 September 2004), showed how success in making the country safe and protecting civilians is directly related to the success of the peace process. Since that time, there has been an upsurge in crimes against humanity and acts of genocide and ethnic cleansing as a result of the criminal activities of Congolese and foreign forces and groups, particularly in the eastern provinces.

30. The situation deteriorated further in November, when Rwanda threatened to take military action in the Democratic Republic of the Congo in order to forcibly repatriate the Forces démocratiques de libération du Rwanda (FDLR), despite the establishment in September of the joint verification mechanism for resolving border conflicts between the two countries and the holding in November in the United Republic of Tanzania of the International Conference on Peace, Security, Democracy and Development in the Great Lakes Region. At this conference, leaders of 11 African States, including the Democratic Republic of the Congo and Rwanda, set out their shared determination to bring lasting peace and security to the region.

31. There are justified fears that the elections planned for June 2005 under the terms of the Global and All-Inclusive Agreement on the Transition might be postponed. Statements on the radio by the chair of the Independent Electoral Commission to the effect that they could not be

held before October 2005 appear to confirm these fears, and have led to violent protests against a backdrop of political scheming. On 10 January, youths erected barricades and threw stones in the working-class districts of Kinshasa; some of them engaged in looting. The demonstration was suppressed by the police, who fired on demonstrators, killing four and wounding several others according to the official figures. In all, 74 individuals were arrested. Demonstrations also took place in Lubumbashi and Mbuji-Mayi.

32. In the days that followed, after the President had decided to suspend 6 ministers and 10 heads of State-run corporations accused of corruption in a report by the National Assembly, Jean-Pierre Bemba's Mouvement de libération du Congo (MLC) threatened to withdraw from the transition process in protest at the suspension of one of its representatives in the Government.

33. On 18 January, the broadcasters Canal Congo TV, Canal Kin TV and Radio Liberté Kinshasa, which are owned by Bemba, were taken off the air until 21 January on the orders of the Minister of the Press and Information. The minister also banned political broadcasts and phone-ins on television and radio channels other than the official ones.

34. In this context, the independent expert is concerned about reactions that are outside the agreed framework for dialogue, infringements of freedom of expression and the conditions in which human rights defenders have to work.

35. To give a few examples: in August, officers of the National Intelligence Agency in Lubumbashi raided Radio Hosanna, confiscated equipment and arrested six staff members after the broadcast of a sermon by the Rev. Albert Lusuka, who was accused of inciting people to rebel in a speech criticizing corruption and bad governance in the country. In September, a provisional arrest warrant was issued for Freddy Monsa Iyaka Duku, editor of the Kinshasa daily newspaper *Le Potentiel*, by the Kinshasa/Gombe district court prosecution service for "injurious allegations" against the Vice-President, Mr. Z' Ahidi Ngoma, in an article. In December, Feu d'Or Bonsange Ifonge, editor of the Kinshasa newspaper *Tapis Rouge*, was arrested by police from the Kinshasa/Gombe district court prosecution service on account of an article on the running of the Internal Revenue Service. On 5 January 2005, Déo Mulima Kampuku, of the daily newspaper *La Référence Plus*, was sentenced to four months' imprisonment and a fine for defamation, following the publication of an article on the oil company Cobil Oil.

36. Since 16 December 2004, members of four human rights associations that are part of the CADHOK umbrella group (the Katanga branch of the Association africaine de défense des droits de l'homme (ASADHO-Katanga), Centre des droits de l'homme et du droit humanitaire (CDH), Groupe d'action non-violente évangélique (GANVE) and Nouvelle dynamique syndicale (NDS)) have been threatened and physically attacked for denouncing the illegal use of mining resources in Katanga province by a factory belonging to the Société minière du Katanga. On 23 December 2004, Mr. Golden Misabiko, president of ASADHO-Katanga, was threatened by two men from the security services in Lubumbashi. Mr. Misabiko had already been arrested, arbitrarily detained and tortured in Kinshasa in 2001. On 24 October, Mr. Misabiko had circulated an open letter to ASADHO partners denouncing violations of the human rights of civilians in the conflict in Nord-Kivu and Sud-Kivu and drawing attention to the risks to civilians in the mining villages in Katanga as a result of the illegal mining of uranium minerals in the province.

37. All these examples clearly illustrate the dangers to which Congolese NGOs writing about or monitoring the human rights situation are constantly exposed, particularly where cases of corruption or the illegal exploitation of resources are concerned. This situation might well get worse in the run-up to the elections. The independent expert recommends that, in the interests of fairness and peace, those involved at all levels should act with moderation; at the same time, he calls on the media to show professionalism and to respect their profession's code of ethics.

III. ILLEGAL EXPLOITATION OF NATURAL RESOURCES, ARMS-TRAFFICKING, INSECURITY, INTER-ETHNIC TENSION AND MASSIVE VIOLATIONS OF THE HUMAN RIGHTS OF THE CIVILIAN POPULATION

38. The continuing violence and insecurity affecting the population pose a major challenge to the national and international actors involved in the Congolese conflict and to those trying to find a solution to it.

39. The independent expert believes that unless security is restored to the whole country the chances of a successful transition are negligible. He is very concerned at the series of armed clashes within the Congolese armed forces in Nord-Kivu and Sud-Kivu and at the presence of foreign groups and militias, particularly the Rwandan FDLR (consisting of Interahamwe and former members of the Rwandan armed forces) and the Burundian Front pour la défense de la démocratie (FDD) and Front national de libération (FNL).

40. In 2004, these two provinces witnessed large-scale massacres and numerous human rights violations. The massacres included those in Lukweti, Nyabiondo, Walikale, Bweremana and Kanyabayonga in Nord-Kivu, those in Kalehe, Bukavu, Kaniola and Uvira in Sud-Kivu, and the Gatumba massacre, which took place in Burundi but in which all the victims were Banyamulenge.

41. The perpetrators of massacres and crimes against humanity are often known; there are corroborating reports on several such incidents. In Bukavu, rebel troops led by Colonel Mutebutsi were responsible for at least 13 summary executions, 15 rapes, looting and other atrocities against the civilian population. Loyalist Congolese army troops under the command of General Mbuza Mabe slaughtered at least 4 Banyamulenge (16 others are reported to have disappeared) and wounded at least 9 more, forcing the rest to flee, as well as killing 2 non-Banyamulenge civilians and ransacking houses. They also killed 6 Banyamulenge in Walungu and pursued them through Kalehe. Troops under the command of Laurent Nkunda were responsible for the killing of at least 14 civilians and 5 prisoners of war, the systematic rape of the women they encountered, many assaults and the systematic looting of the town. Nkunda was already responsible for serious crimes committed in Kisangani in 2002. The fact that this warlord can continue to commit crimes against humanity is not only extremely serious in itself, but also a contributory factor in stirring up anti-Banyamulenge feeling, and seriously jeopardizes the transition.

42. The clashes led the Banyamulenge to flee Bukavu. During his visit to Bukavu between 11 and 15 November, the independent expert witnessed the deployment of the Congolese armed forces to prevent the Banyamulenge from returning from Cyangugu, as well as the demonstrations by ordinary people on Monday 15 November against the return of the Banyamulenge.

43. In Gatumba, during the night of 13 August 2004, a huge group of militiamen attacked the camp there, killing 152 Banyamulenge. The investigations by the United Nations appear to suggest that responsibility for the massacre lies with Rwandan and Burundian rebel groups, with the participation of Congolese militiamen. The failure of the Burundian army to intervene during the massacre raises doubts that the investigators have been unable to resolve.

44. The issue of Rwandan-speakers is a sensitive one in Goma, where there is a conflict between the RCD-Goma authorities and large parts of the population who consider RCD-Goma as Rwandan puppets. The security situation in the city is dire on account of the numerous murders committed, according to some, by underground forces to show how the provincial authorities are incapable of guaranteeing security or, according to others, by militiamen reputedly in the pay of the governor. When he arrived in Goma on 15 November, the independent expert was informed that demonstrations against insecurity by ordinary people had been suppressed.

45. The climate became even more tense at the end of November, when the Rwandan President announced that he wanted to send troops to the Democratic Republic of the Congo to solve the FDLR problem once and for all. Faced with this prospect, the Government decided to send 10,000 soldiers to the east to secure the borders and clear the area of FDLR soldiers. Rwandan-speaking Congolese from Nord-Kivu were against sending troops on the grounds that there would be Interahamwe among them who were planning to exterminate the Rwandan-speaking population.

46. Clashes took place in Bweremana, Walikale, Kanyabayonga and Lubero between mostly Rwandan-speaking Congolese soldiers and the troops sent from Kinshasa together with the Mai-Mai, causing many casualties and displacing at least 150,000 persons. Despite President Kagame's eventual decision to leave the solution of the FDLR problem to the international community, the humanitarian consequences of this new fighting have been tragic. Although MONUC has established a humanitarian zone between the warring parties to allow the distribution of aid, the situation is a worrying one with serious consequences for the human rights situation.

47. The independent expert notes that there has been a simultaneous escalation of violence in Ituri, but he has not yet had time since his appointment to visit the area. Nevertheless, he has closely followed developments in the situation through the reports that have been brought to his attention. In Ituri too, behind a cloak of ethnic hatred, the conflict is driven by economic interests.

48. In May, representatives of seven armed groups in Ituri signed an agreement with the Government setting out the conditions for turning in their weapons and taking part in the transition process, which raised hopes for peace in the district. However, the State has never

completely re-established its authority over all the territory of Ituri, which remains divided into zones controlled by different groups exploiting the goldmines, smuggling goods and arms to Uganda, extorting money from the civilian population and attacking humanitarian convoys.

49. In the last few months of the year the violence escalated. Massacres were carried out in Lengabo, Bunia and Kpandroma. In January 2005, dozens of extrajudicial executions of Hema men and children by militia of the Front de nationalistes intégrationnistes (FNI) were reported. Other armed groups, particularly the Forces armées du peuple congolais (FAPC), also allegedly committed serious human rights violations. At least 15,000 people took refuge in Uganda according to several sources.

50. However, while the situation in the east is the most worrying, there are serious problems elsewhere in the country too; in Katanga, for example, an armed group led by Alain Ilunga Mukalyi reportedly attacked the mining town of Kilwa on 15 October.

51. The reasons for the violence and insecurity, again, are mainly to be found in the illegal exploitation of natural resources and the related arms-trafficking. The United Nations Expert Panel on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo has demonstrated the responsibility of certain Congolese, Rwandan and Ugandan political and military elites, and has identified individuals involved in the trafficking.

52. The illegal exploitation of resources is a crime and a violation of human and peoples' rights. But where and by whom are the cellphones and computers containing the columbite-tantalite (*coltan*) stolen in the Democratic Republic of the Congo manufactured? And where and by whom are the weapons sold to the militiamen manufactured? Those responsible are easily identified. In a world haunted by visions of weapons of mass destruction, terrorism and unscrupulous mafia-like gangs, it is about time attention was paid to the danger posed by the continued and uncontrolled exploitation of the uranium that is so abundant in parts of the Democratic Republic of the Congo.

53. Those who are so eager to appropriate the resources available in the country resort to violent methods which, in a particularly depressed socio-economic environment like the one affecting the country as a whole, give rise to endless conflicts. The first to suffer from this situation are young people and children, who are manipulated, recruited and pressed into service by armed groups to satisfy various needs of a military, logistical or sexual nature. Some political parties also make use of children, manipulating them to turn them into militias of their own. The results are often tragic, as when at least 18 youngsters and street children (*shegués*) were slaughtered by the populace in Mbuji-Mayi, Kasai-Oriental, without the police intervening.

54. The impact on the human rights of the civilian population is severe, with countless violations of the rights to life, physical integrity, liberty, security and the protection of individuals and of their homes, the restrictions imposed by armed groups on freedom of movement, attacks on farmers, the destruction of commercial infrastructure, as when the market in Bukavu was looted, and attacks on and the destruction of health-care facilities.

IV. STATUS OF WOMEN AND THE TRAGEDY OF MASS RAPES OF WOMEN, GIRLS AND CHILDREN

55. Women play a fundamental role in Congolese society, not only as mothers and wives but also as vital economic actors, since most of the population lives off farming and informal work done by women. However, it is clear from many discussions and reports that the situation of women in the Democratic Republic of the Congo is a cause for particular concern.

56. Women, girls and children suffer from discrimination and from all kinds of abuse, and are the main victims of the war because of the omnipresent sexual violence to which they are subjected by large numbers of men from various armed groups. They are the victims of hateful crimes that are a stain on the conscience of all humanity but that take place against a background of almost total indifference on the part of the international community.

57. Even before the war, women were legally subordinate to men. The Congolese Family Code enshrines discrimination against married women. Several of its provisions need to be amended to guarantee equality between men and women within the family. These provisions include: article 352, which sets the marriageable age for women at 15 and for men at 18, thus encouraging the practice of imposing forced marriages on young girls; article 448, under which a married woman needs her husband's permission to bring a court action; article 467, which provides for a prison sentence of between six months and one year, plus a fine, for a married woman who commits adultery (the same article punishes adultery by a husband, but in this case the acts must be of an "injurious nature"); and article 490, paragraph 2, which entrusts the management of family property to the husband.

58. Legislation only reinforces a discriminatory situation which, unfortunately, is an established fact of life in Congolese society. Girls are expected to marry at a very young age, to the detriment of their education. A higher percentage of boys than of girls attend school.¹ Family life is, moreover, very difficult for women. Women are not spared from the malnutrition or diseases that afflict the majority of the population. They also have problems specific to them: the maternal mortality rate was 990 per 100,000 women in 2000, and there are grounds for thinking that the situation has not improved since then, given the widespread collapse of health services in the country. Very few women have access to contraception such as condoms, and they find it hard to protect themselves from sexually transmitted diseases, particularly HIV/AIDS. The independent expert was also told that domestic violence was widespread, although it is not possible to put a figure on the extent of the problem.

59. Women also have a subordinate position in Congolese society, especially in rural areas. Few women occupy important positions in civil society or in politics. The President and the four vice-presidents are all men. All the provincial governors are men. The vast majority of delegates to the Inter-Congolese Dialogue were men. According to the Inter-Parliamentary Union, women make up only 10.1 per cent of the Congolese parliament. The Government consists of 36 ministers, of whom 5 (13.8 per cent) are women, and 25 deputy ministers, of whom 3 (12 per cent) are women; out of the total of 61 members, 8 (13.1 per cent) are women.

60. The independent expert found that almost everywhere he went a large majority of the politicians, NGO representatives and government officials he spoke to were men. Even some of the women's NGOs were represented by men.

61. The effects of consigning women to a lower status have been particularly perverse ever since the conflict unleashed a widespread wave of violence in a climate of total impunity. The independent expert considers that “there is a direct link between discrimination practised against women in general and the exacerbated violence inflicted on women in times of war. The fact that women in the [Democratic Republic of the Congo] are considered to be second-class citizens is closely related to the violence inflicted on them and to the discriminatory absence of appropriate measures on the part of the State to combat such violence”.²

62. This situation has facilitated the abuse of women, and some members of MONUC who have been accused of sexual abuse have contributed to it. Such behaviour casts a pall over the moral authority of the world’s guarantor of peace and respect for human rights.

63. The Office of Internal Oversight Services (OIOS) of the United Nations has conducted an investigation into the allegations of sexual abuse (including in Ituri) within MONUC. Between the end of October and the beginning of November 2004, six soldiers and one civilian staff member were dismissed following the OIOS investigation. However, these incidents have shown yet again that large-scale reform of the United Nations is needed in order to resolve the internal contradictions that hinder its effectiveness. The United Nations cannot institute criminal proceedings against the soldiers who committed the sexual abuse, who are handed over to their national authorities. There is therefore a great risk that they will escape criminal prosecution, especially as OIOS complained in its report about the lack of cooperation in its investigation by the military contingents concerned. Pending the introduction of the structural reform referred to above, the United Nations now needs to set up, with the agreement of the countries concerned, follow-up mechanisms to ensure that the individuals implicated are tried and, if found guilty, punished in accordance with the applicable laws and ordered to make redress. Given the gravity of the abuse and the context in which it took place, the possibility of taking their cases to the international courts dealing with crimes against humanity should be considered. Punishing the crimes committed by peacekeepers would also send a signal that no criminal, Congolese or otherwise, can escape justice.

64. It is high time to put a stop to abuses and impunity, as sexual violence in the Democratic Republic of the Congo has reached absolutely intolerable proportions, as regards both the brutal methods used and the number of victims. Below are some of the cases that have been brought to the attention of the independent expert.

65. On the night of 21 December 2003, 119 women, including pregnant women, teenagers and little girls, were raped in Bongandanga and Songo Mboyo, in Equateur province, by soldiers of the Ninth Battalion. Some women were raped by more than 10 soldiers. In several cases, the women were raped in front of their husbands. Any woman who objected was hit and threatened with death. In Bongandanga, Boliko Yambo was killed for trying to protect his wife. The soldiers deliberately trampled on a three-month-old infant.

66. Soldiers from the Ninth Battalion had been in the region since 1999, and regularly looted civilian property. They were therefore well known to the victims, some of whom had already been sexually harassed by the soldiers. Seventy-eight of the soldiers who took part in the rapes

were identified. Over 100 complaints were apparently filed with the six staff members of the Mbandaka military prosecutor's office who visited the scene with a delegation from the Ministry of Human Rights. However, even though those responsible were identified, no investigation appears to have been carried out as yet.

67. This example clearly illustrates what is a daily reality in most of the country: the joint initiative to combat sexual violence in the Democratic Republic of the Congo has recorded over 40,000 cases of rape.³ However, it is impossible to establish the exact figures because of the lack of security and the inaccessibility of certain regions, and because humanitarian agencies and NGOs are not always present; the figures therefore only reflect the number of women able to seek and find help. Account must also be taken of the social climate and the fact that rape victims face exclusion and rejection. Rejection, for women as well as for children, means being left at the mercy of hunger, disease and more abuse. The victims therefore hesitate or refuse to come forward. The real number of women who have been raped could therefore be far higher.

68. The particularly barbaric and violent nature of the systematic rape of women, girls and children, and even of older women, should be stressed.⁴ Some women have been raped on their way to the fields and again on their way back. Soldiers hold women and girls against their will and reduce them to slavery. Some women are kept in military camps wearing nothing but panties, and are completely at the disposal of the soldiers, who rape them every day for months. The reports mention how common it is for a woman to be raped by groups of up to 20 men or in front of her family, and have to endure the most appalling acts of barbarity and torture. One woman who was held in sexual slavery for three years was raped by several soldiers on the day she gave birth to a child conceived as a result of earlier rapes. Some of the women who were raped were shot in the vagina.

69. On 17 November 2004, the independent expert met the women and girls admitted to the hospital in Goma under the DOCS programme of assistance to rape victims. He heard about and saw for himself their unspeakable suffering. He met and took into his arms a four-year-old girl who had been raped by soldiers on 16 November 2004, the day before he arrived. He met a woman whose eyes had been gouged out by the men who had just raped her. He met another woman whose rapists had cut her belly open with a knife after raping her, and another who had been raped by 10 soldiers and then shot in the lower abdomen, having told her attackers beforehand that she was three months pregnant. The independent expert met other women whose stories were equally horrific.

70. The consequences of rape on the victim's physical and mental state are terrible. In addition to the need for psychological assistance and treatment, the physical injuries often need complex long-term treatment. The genital system of women who have been raped is severely damaged; she may suffer from bleeding and urinary and bowel incontinence. Another consequence of rape is increased maternal mortality related to the higher risk of complications during childbirth. The fate of children conceived by rape is another major source of concern. In addition, rapes are responsible for the soaring rate of sexually transmitted diseases, particularly HIV/AIDS, with predictable consequences for the country's future. All this has to be seen in the context of a health system that has collapsed in the wake of the collapse of the Congolese State, so that medical care is virtually non-existent.

71. Responsibility for all this is shared by all the armed forces and groups involved in the conflicts. Members of the armed forces of the Democratic Republic of the Congo, Rwanda, Burundi and Uganda have committed rapes. All the Congolese armed groups (Mai-Mai, MLC, RCD-Goma, RCD/Mouvement de libération (RCD/ML), Union des patriotes congolais (UPC), FNI and FAPC) and all the foreign militias (FDLR from Rwanda and FDD and FNL from Burundi)⁵ are responsible for a range of extremely serious human rights violations and crimes against humanity committed in the course of the conflicts. Those responsible for these crimes are often known, and should be prosecuted.⁶

72. In the face of the violence perpetrated by all the war chiefs in the name of money, if not human folly, it is vital to ensure compliance by the Democratic Republic of the Congo and all the other countries involved in the conflict, and also by the entire international community, with their legal obligations with regard to the observance and protection of inalienable human rights.

73. An immediate halt must be called to the violence in general and sexual violence in particular; to paraphrase Jan Egeland, United Nations Under-Secretary-General, humanity is today being shaken by more than one tsunami. As Yolande Mukagasana wondered, is it possible that the international community is more comfortable intervening in natural disasters than in man-made ones because they do not raise fundamental questions about the responsibilities of Governments?

74. Later in this report, after reviewing other aspects of crimes against humanity and human rights violations, the independent expert will make some more specific proposals for re-establishing security in the Democratic Republic of the Congo and prosecuting those responsible for such crimes. At this stage, however, he would like to put the emphasis on the duty of the Congolese State and the international community to work quickly and effectively to provide medical, psychological and social assistance to women who have been raped, as well as to their children and families, and to guarantee their physical protection as well as legal assistance in claiming their rights. He calls on the international community to provide without further delay all necessary financial assistance to support the joint initiative to combat sexual violence in the Democratic Republic of the Congo, and calls on the Government to provide material and financial support for the initiative. He calls for intervention to match the scale of the country's needs, in terms of finance and capacity-building, in order to make the health system operational again.

75. At the same time, the independent expert recommends that the Congolese Government should take steps to enhance women's status (that is, ensure their equality with men) in legislation, society, public-sector positions and people's mentality and culture, including through an intense educational campaign in the media, schools and training courses.

V. JUSTICE AND COMBATING IMPUNITY

76. One priority must be to ensure the rule of law and to bring those responsible for violations to justice. The President has referred the situation in the Democratic Republic of the Congo to the International Criminal Court with regard to all relevant acts committed anywhere in Congolese territory since 1 July 2002, and the prosecutor has already started an investigation. The Government has also called for the establishment of a special tribunal to investigate crimes

of genocide, war crimes and crimes against humanity committed before 1 July 2002. The independent expert welcomes the Government's desire to see justice done and the involvement of the International Criminal Court in the Congolese problem, and wholeheartedly supports the idea of setting up an international criminal tribunal for the Democratic Republic of the Congo to hold all those responsible at the highest levels accountable for their acts and to see that the victims receive redress.

77. The independent expert also draws attention to the need to reactivate the national (civil and military) judicial system, which should try all those responsible for offences and crimes against humanity and, more generally, guarantee the rule of law. Doing this will be both an urgent and a long-term task, given that the conditions needed for a functioning system of justice have not been unaffected by the disaster, the lack of resources and capacity, and corruption in other State sectors.

78. The term "disaster" here includes the malfunctioning of the police and intelligence services, as well as the prison system, which, far from achieving the social rehabilitation of prisoners, is characterized by violations of international standards. Moreover, the existence of illegal punishment cells (*cachots*), which are true hellholes, continues to be reported. The independent expert reserves the right to return in future reports to the issue of reorganizing the judicial system, as he would like at this point to concentrate on the need to first restore security in the country.

VI. CONCLUSIONS AND RECOMMENDATIONS

79. The independent expert calls on the transitional Government and the Congolese and foreign parties involved in the conflict to act on the following recommendations:

(a) Put an end to the violence without delay, arrest the perpetrators and hand them over to Congolese and international justice;

(b) Dismiss from the Government, institutions and armed forces of the Democratic Republic of the Congo anyone guilty of crimes against humanity and serious human rights violations, whatever their position in the hierarchy;

(c) Take steps to train the armed forces of the Democratic Republic of the Congo (including in international humanitarian law and human rights), control them and instil discipline in them; give them the means to put a stop to the violence, by urging foreign militia to return to their countries, encouraging Congolese refugees, regardless of their ethnic origin, to return home, taking control of all the country's borders and restoring law and order to areas where it has broken down and where human beings are used as slaves by those looting the country's natural resources, arms-traffickers and bandits of all descriptions;

(d) Gradually hand over responsibility for security to a trained, equipped, disciplined and responsible national police force;

- (e) Enter into political dialogue aimed at consolidating the Congolese nation, in order to build a bright future for all Congolese citizens without any discrimination, including discrimination based on sex, age, membership of an ethnic or political group, opinions or beliefs;
- (f) Work to prove to the whole world that the Congolese people honour their commitments, particularly those in the Global and All-Inclusive Agreement, to ensure that free elections are indeed held in June 2005 and to show that the country is irreversibly committed to peace, harmony, democracy and development;
- (g) Practise good governance, manage the country's resources properly and combat corruption at all levels;
- (h) Base the country's development on the primary objective of enhancing the status of women and allowing them to fulfil their potential as full citizens in all walks of life (political, social, economic, cultural and family). The abuse of women and children, and crimes against them, must be stopped, and all victims should receive the assistance they need to help them recover;
- (i) Launch immediately a national human rights campaign to promote a culture of tolerance, peace and responsibility, so as to lay the foundations in everyone's mind for a common home to be built together in a spirit of fraternity and tolerance;
- (j) Step up efforts to combat impunity, ensure that the independence and powers of the judiciary are fully enshrined in legislation and that the separation of powers is observed, and provide the judicial system with all resources necessary to investigate and try offences and crimes committed by all parties and individuals;
- (k) Set up a compensation fund for the victims of crimes against humanity, financed partly by income from the legal exploitation of the country's natural resources and with help from the international community. All ill-gotten gains, including those from trafficking in natural resources, should be confiscated, wherever they may be, and should be used to finance the compensation fund and rebuild the country;
- (l) Take all necessary measures without delay to ensure that the International Criminal Court can function properly and without hindrance, and introduce and support initiatives within the United Nations aimed at establishing an international criminal tribunal for the Democratic Republic of the Congo for the purpose of trying crimes against humanity and serious violations of human rights and international humanitarian law and prosecuting those responsible.

80. The independent expert recommends that the international community, including the United Nations, the Security Council, the African Union, the European Union and all States, should:

- (a) Provide political, financial, military and diplomatic support and assistance for the country's process of transition, reconstruction and pacification and for the affirmation of all attributes of sovereignty of the Democratic Republic of the Congo;

(b) Cooperate with the Democratic Republic of the Congo to put an immediate stop, once and for all, to the illegal exploitation of natural resources and arms-trafficking, refuse to accept the illegal looting of those resources and seize the assets of those responsible for such trafficking, wherever they may be, for the benefit of the country;

(c) Place the protection of the population and respect for human rights at the heart of the next Security Council resolution. The mandate of MONUC should be strengthened and extended with a view to guaranteeing, nationwide, the protection of the civilian population, the disarming of armed groups, the repatriation of foreign groups and militias and the arrest of those responsible for crimes against humanity. By way of comparison, the Democratic Republic of the Congo is 214 times bigger than Kosovo, has at least 25 times more inhabitants and the conflict there has cost almost 400 times as many human lives. However, if we compare the size of the military and police force authorized at the height of the NATO/KFOR mission in Kosovo with that of the current MONUC force (which is now at its peak), it can be seen that at least three times more soldiers and police officers were assigned to serve the cause of peace in Kosovo than in the Democratic Republic of the Congo. On the basis of these figures, the independent expert believes that the Security Council should increase the military presence of MONUC to at least 80,000 soldiers for the whole transition period and for some time after the elections, with the aim of working with the Congolese civil and military authorities to completely normalize the situation in the country. The European Union Artemis operation in Ituri was a convincing example of what can be done; this example should be repeated in a United Nations context. The MONUC military force should be reinforced so as to provide effective protection for the civilian population, especially for women and children. Strict disciplinary procedures should be set up in order to avoid further abuses and excesses, including sexual abuse;

(d) Strengthen the mandates and material and human resources of the human rights and child protection sections of MONUC, to enable them to cope with the needs of this huge country;

(e) Give the Office of the United Nations High Commissioner for Human Rights the resources it needs to enable it to make the situation in the Democratic Republic of the Congo one of its top priorities, so that it can help end the armed violence that gives rise to such unspeakable human rights violations and use all its moral authority to speak out for the victims of all kinds of violence, including sexual violence, in an effort to sway international public opinion and international decision makers. The Office of the United Nations High Commissioner for Human Rights should be given substantially more resources for this purpose. The independent expert would like to point out in passing that the resources available to him for the fulfilment of his own mandate (including human and financial resources) are, despite all the efforts made, still insufficient. Given the gravity and complexity of the situation and the volume of work necessary to monitor it, he calls on the High Commissioner to set up a special group of officials to monitor the situation in the Democratic Republic of the Congo from headquarters in Geneva, and to cooperate with the independent expert in the fulfilment of his mandate. He calls on donors to provide the necessary funding for this purpose;



(f) Establish, by decision of the Security Council, an international criminal tribunal to try crimes committed during the successive conflicts in the Democratic Republic of the Congo;

(g) Take all necessary steps to ensure that all the above-mentioned recommendations, which refer to only the most urgent of the country's needs, are implemented. For the independent expert, the humanitarian efforts undertaken and planned on behalf of the victims of the Asian tsunami should not be hijacked by politicians to salve the conscience of the rich countries. The men, women and children who have been attacked, raped, tortured and killed by criminals in broad daylight have been waiting too long for their cries of despair to be heard; those cries do not seem to have resonated with a force to match their extreme gravity.

Notes

¹ According to the United Nations Children's Fund (UNICEF), the literacy rate for boys in 2000 was 73 per cent, as compared with 50 per cent for girls; and 52 per cent of boys, as compared with 47 per cent of girls, had access to basic schooling between 1998 and 2002. Girls then find it more difficult than boys to continue to attend school (55 per cent, as compared with 48 per cent, between 1998 and 2001) (http://www.unicef.org/infobycountry/drcongo_statistics.html).

² Amnesty International, "Democratic Republic of Congo: Mass rape - time for remedies", part II, report dated 26 October.

³ 25,000 in Sud-Kivu, 11,350 in Maniema, 3,250 in Kalémié, Katanga, and 1,625 in Goma, Nord-Kivu.

⁴ The independent expert was also told by several people that the rape of young boys and sometimes even men, particularly by the Interahamwe, is increasingly common.

⁵ Amnesty International, "Democratic Republic of Congo: Mass rape - time for remedies", part III, report dated 26 October.

⁶ Despite the shortcomings of Congolese legislation, which does not clearly define the elements of rape and does not clarify the concept of consent (art. 169, para. 7), of the Congolese Military Criminal Code states that rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other act of sexual violence of comparable gravity are crimes against humanity.
